

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BARBARA JEAN DENNIS,

Defendant.

Case No. 2:10-cr-00091-KJD-GWF

ORDER

Motion to Vacate (#149)

This matter is before the Court on Defendant's Motion to Vacate the Decision to Defendant's Motion to Compel Grand Jury Transcripts Pursuant to FRCP 6(e)(3)(E)(ii) (#149), filed on November 30, 2015.

Defendant previously filed a motion to compel production of grand jury transcripts on November 4, 2015. *Motion* (#126). The Court conducted a hearing on that motion on November 18, 2015. Shortly before the hearing, the Government filed its Response (#142). During a previous hearing on November 4, 2015, the Court urged the Government to provide transcripts of the grand jury testimony of witnesses it intends to call at trial thirty days in advance of trial so that Defendant, who is representing herself, has adequate time to prepare. In its response filed on November 18, 2015, the Government stated that it had determined that it will not call either of the witnesses who testified before the grand jury in its case in chief. The Government stated, however, that it was reviewing the grand jury testimony to determine whether it might be subject to production under Rule 16 or *Brady/Giglio*, and if so, it would produce the transcripts of such testimony. Based on the Government's representations, the Court denied Defendant's motion to the extent it is based on Rule 26.2 of the Federal Rules of Criminal Procedure or the Jenks Act, 18 U.S.C. § 3500.

1 In its oral ruling from the bench on November 18, 2015, the Court also conditionally denied
2 Defendant's motion for disclosure of the grand jury testimony pursuant to Rule 6(e)(3)(E)(ii) which
3 provides that the court may authorize disclosure of a grand jury matter "at the request of a defendant
4 who shows that a ground may exist to dismiss the indictment because of a matter that occurred
5 before the grand jury." Defendant requests disclosure of the grand jury testimony based on her
6 claim that the Government's witnesses provided perjured testimony and she is innocent of the
7 crimes charged against her in the indictment. Because Defendant did not have an opportunity to
8 review the Government's response prior to the November 18, 2015 hearing and to file a written
9 reply, the Court stated that it would give Defendant an opportunity to file a reply, and the Court
10 would reconsider and reverse its decision if warranted. Defendant thereafter filed *Motion (#149)*
11 which the undersigned treats as the reply it authorized Defendant to file.

12 With her reply, Defendant has submitted, *in camera*, a document which challenges point by
13 point the allegations made against her by the Government during the extradition proceedings in
14 Canada which she argues can only have been based on perjured testimony by the grand jury
15 witnesses or the Government's misrepresentation of the witnesses' testimony. Defendant seeks the
16 grand jury testimony in order to file a motion to dismiss the indictment on the grounds that there is
17 no valid evidence against her. A motion to dismiss an indictment cannot be used as a device for
18 summary trial of the evidence. *United States v. Boren*, 278 F.3d 911, 914 (9th Cir. 2003).
19 Defendant will have the opportunity to challenge the evidence presented against her at trial.
20 Therefore, she has not set forth valid reasons for disclosure of the testimony before the grand jury.
21 Accordingly,

22 **IT IS HEREBY ORDERED** that Defendant's Motion to Compel Grand Jury Transcripts
23 Pursuant to FRCP 6(e)(3)(E)(ii) and Defendant's Motion to Vacate the Decision to Defendant's
24 Motion to Compel Grand Jury Transcripts Pursuant to FRCP 6(e)(3)(E)(ii) (#149) are **denied**.

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1 **IT IS FURTHER ORDERED** that Defendant may file a written objection to this Order on
2 or before **January 11, 2016**.

3 DATED this 24th day of December, 2015.

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6 GEORGE FOLEY, JR.
7 United States Magistrate Judge
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